

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Application by SBC Communications Inc.,)
 Southwestern Bell Telephone Company, and)
 Southwestern Bell Communications Services,)
 Inc. d/b/a/ Southwestern Bell Long Distance)
 for Provision of In-Region, InterLATA)
 Services in Texas)

CC Docket No. 00-65

REPLY COMMENTS OF

**@LINK NETWORKS, INC., BLUESTAR NETWORK SERVICES, INC., DSL.NET,
 INC., MGC COMMUNICATIONS, INC., D/B/A MPOWER COMMUNICATIONS
 CORP., and WALLER CREEK COMMUNICATIONS, INC. D/B/A PONTIO
 COMMUNICATIONS CORPORATION INC.**

@Link Networks, Inc., BlueStar Network Services, Inc., DSL.net, Inc., MGC

Communications, Inc., d/b/a Mpower Communications Corp., and Waller Creek

Communications, Inc. d/b/a Pontio Communications Corporation, Inc. ("Joint Commenters"), by
 undersigned counsel and pursuant to the Commission's April 6, 2000 *Public Notice*, submit these

reply comments concerning the above-captioned application ("Application") of SBC

Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell

Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance (collectively "SBC") as

supplemented by additional information filed by SBC on April 5, 2000.¹ For the reasons, stated

below the Commission should deny SBC's application to offer interLATA service in Texas.

¹ Comments Requested on the Application by SBC Communications, Inc. For Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Texas, Public Notice, CC Docket No. 00-65, DA 00-750, April 6, 2000.

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On April 26, 2000, Joint Commenters outlined for this Commission the areas where SBC continues to fail to demonstrate compliance with the competitive checklist in Section 271(c)(2)(B) of the Act.² Joint Commenters pointed out how SBC is not in compliance with the competitive checklist in regard to hot cuts. SBC has not shown that it is providing nondiscriminatory access to DSL capable loops. SBC has not implemented access to loop prequalification information. Further, SBC continues to engage in anticompetitive discrimination in its provision of DSL capable loops. These concerns of Joint Commenters were validated by both the abysmal showing made in SBC's application, as well as the other evidence conveyed in the comments of this proceeding.

Subsequent to the filing of Joint Commenters's comments, the Department of Justice (DOJ) commented on SBC's application³. As expected, DOJ also found little change in the record from SBC's first application which was rejected by DOJ. DOJ stated that the record did not support a grant of the application, but it expected SBC to file additional information in May, at which time DOJ would do a further analysis. So on the basis of the current record, SBC's application may not be granted. Yet SBC continues to press forward with a deficient application, looking to perfect it by constantly bringing in new information.

² 47 U.S.C. § 271(d)(3)(A).

³ Evaluation of the United States Department of Justice, *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Service, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket 00-65 (May 12, 2000).

The Commission has clearly stated multiple times that applications for Section 271 authority must be complete when filed.⁴ The Commission must be able to make a determination based upon the information submitted in the application. Under the Commission's Section 271 filing guidelines, SBC may only provide additional information if necessary to rebut arguments made, or new facts submitted by commenters.⁵ Instead, since January SBC has been using its piece-meal application tactics to waste the vital resources of the Commission, DOJ, and all of its competitors. SBC's Section 271 application tactics are no different than the approach it takes with its competitors, *i.e.* delay and obfuscation, with the hope that such actions will eventually wear down the other side, resulting in SBC getting what it wants, regardless of whether it is just or reasonable. In fact, Joint Commenters expect, based on recent experiences with SBC, that this April data will not show substantial improvements in SBC's required performance. The most efficient course for the Commission to take at this point should be to immediately deny SBC's application as patently defective. Such immediate action by the Commission is the best way to assure efficient consideration of Section 271 applications, and enforce its requirement that Section 271 applications be complete when filed.

⁴ See Public Notice, *Updating Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA-99-1994, 1999 WL 766282 (F.C.C.)(Sept. 28, 1999) ("BOC Filing Requirements"); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To provide In-Region, InterLATA Services in Mich Michigan*, 12 FCC Rcd 20543 para. 49-50 (1997).

⁵ BOC Filing Requirements, *supra*.

If, however, the Commission decides to consider SBC's constant supplements to its application, the Commission should establish a new 90 day review period beginning with the date that SBC submits its April performance data. This would allow adequate time for the Commission, DOJ and other parties to analyze the new data, and determine whether it demonstrates that SBC is now in compliance with the competitive checklist.

If the Commission does not immediately deny SBC's application, Joint Commenters will also review with great interest any SBC supplemental performance data. Joint Commenters will also provide the Commission their assessment of whether any such new data justifies grant of SBC's application. At that time, Joint Commenters will also bring to the Commission's attention further experiences of Joint Commenters concerning SBC's provisioning of dark fiber, rejection of service requests, and other areas that show that SBC's provisioning of essential facilities and services to CLECs is inadequate and discriminatory.

In conclusion, Joint Commenters urge the Commission to reject SBC's continued attempts to gain approval of its incomplete Section 271 application, and deny the pending SBC application for Texas. If, however, the Commission accepts yet again another supplement to SBC's application, the Commission should exercise its discretion to extend the review period an additional 90 days to give other parties adequate time to review the new data. Joint Commenters reserve the right at that time to further examine the new data, and file additional Reply Comments.

Dated: May 19, 2000

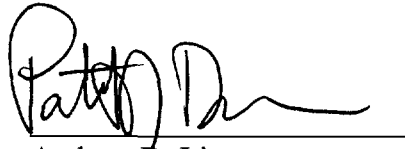
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew D. Lipman", written over a horizontal line.

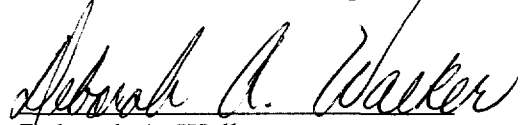
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CERTIFICATE OF SERVICE

I, Deborah A. Walker, hereby certify that on May 19, 2000, I caused to be served upon the following individuals the Comments of @Link Networks, Inc., BlueStar Network Services, Inc., DSL.net, Inc., MGC Communications, Inc., d/b/a Mpower Communications Corp., and Pontio Communications in CC Docket 00-65:



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